

American Arbitration Association
Case Number: 01-19-0000-8808

-----X
In The Matter of the Arbitration

Between

AFSCME DISTRICT COUNCIL 47
"UNION"

OPINION

-and-

AND

CITY OF PHILADELPHIA
"CITY"

AWARD

Grievance 2187-19-04
Murali Kartha – Verbal Warning

-----X
BEFORE: Randi E. Lowitt, Esq., Arbitrator

APPEARANCES

For the City

Daniel Unterburger, Esq.

For the Union

William Campbell, Esq.

Willig Williams Davidson

Pursuant to the provisions of the collective bargaining agreement between THE CITY OF PHILADELPHIA (hereinafter, "the City") and AFSCME DISTRICT COUNCIL 47 (hereinafter, "the Union"), the above-named arbitrator was designated by the American Arbitration Association as Arbitrator to hear and decide the matter in dispute between the above-identified parties.

A hearing was held at the AAA, Philadelphia, PA., on February 12, 2020. The parties were represented by counsel and were afforded a full and fair opportunity to conduct direct and cross examination of sworn witnesses, to present relevant evidence and to argue their relative positions. The record was closed after oral closing arguments. All matters, while not necessarily cited in this Opinion and Award, have been considered. All Claims not expressly granted herein are denied.

There is a second part of this case, to be considered completely separately, regarding Grievance 2187-18-06, a Performance Report. The parties agreed to sever that portion of this case from the instant issue of Written Warning, and to separately address that issue with this Arbitrator, in writing. When that is done, a separate Opinion & Award will be issued.

Some quotation marks (“”) may be used to denote parts of testimony. While no court reporter or stenographer was present and no actual record was taken of the proceedings, the quotation marks denote portions of the notes taken by the Arbitrator during the course of the hearing and represent a close approximation of what was said by a witness or by counsel. Those notes and all attendant materials will be destroyed at the time this Opinion is disseminated.

The Issue:

Was the issuance of the verbal warning to Mr. Murali Kartha supported by just cause?

If not, what shall be the remedy?

BACKGROUND

Mr. Murali Kartha is employed by the City Office of Innovation and Technology (OIT) for the Philadelphia Water Department (PWD). He has worked for the City since September 1995, initially as a programmer, and currently as a Programmer Analyst Project Leader, working for a brief time out of class as a Programmer Analyst Supervisor.

Ms. K [REDACTED] S [REDACTED] is a supervisor with the OIT at PWD, has been with the City for almost thirteen (13) years, and is currently Mr. Kartha's supervisor. She created a binder and timeline of the issues she has had with Mr. Kartha. (City Exhibit #1.0). After she became his supervisor, she issued him a performance review, but, since she had come in towards the end of the performance review yearly period, she said she had given him satisfactory because she "didn't know much of the projects he was working on." (City Exhibit #1.1). Mr. Kartha was charged with managing three apps, Famis, Fixed Asset and Class 400. The verbal warning ultimately issued was primarily based on the Class 400 app.

Ms. S■■■■ said she became aware of users of the app who escalated the issue that the app was not working properly. “They use the interface and don’t know where the data is going...group in finance of PWD are main users and some read only users...finance department alters data, not code, they can’t fix the code.” Mr. Kartha had the responsibility to maintain and fix the code. Ms. S■■■■ set up working sessions with Mr. Kartha, as well as Ms. S■■■■’s manager and the Director to “understand and try to help him fix the issues.” (City Exhibit #1.5). Ms. S■■■■ was shown an email she had received from one of the finance department users, which email copied Mr. Kartha, which led to the session. “We tried to work with Kartha, helped manually but the main purpose of all interface isn’t working if it has to be done manually...we contacted the user and said we are working with him...tried to create a coaching plan for Kartha...he was the only one maintaining the app.” Ms. S■■■■ explained that there were weekly meetings with her, Mr. Kartha and her supervisor, and that they created a coaching plan “to help him define areas and gaps in his work performance, to improve performance...areas of concern and expectation and improvement goals...jointly set up with us, the Union and Kartha and the Union said it’s a good thing we gave him a coaching plan.” (City Exhibit #1.7)

Ms. S■■■■ explained that she not only tried to coach on a global level but that she provided Mr. Kartha with a “granular level of tasks to do

by and when...granular level of tasks for each project..," and that, at the beginning, Mr. Kartha was still responsible for Fixed Asset and Class 400, having had Famis taken from him already. Ms. S████ said she had given plenty of time for each task to be accomplished, but that Mr. Kartha did not meet deadlines. "He used to say he's working on it, trying to fix it...still they are not done." Ms. S████ and her supervisor continued weekly one on one coaching sessions with Mr. Kartha, "to help him to finish the tasks...users were waiting...team's reputation...we have to deliver what the users require...we would point to where the issue was, demonstrate it, and help to show him ow to resolve...it was purely work based...he asked if it was work based or personal and I purely work based." (City Exhibit #1.8). According to Ms. S████, each coaching session could take 30 minutes to an hour, but sometimes they took 3-4 hours. "We asked Kartha if he understood assigned tasks and target dates were ok and he said yes." However, he did not meet the target dates. "Sometimes he would come at the end of the target date, on the due date, and say he has some issues...we said let us know beforehand...we extended target dates so he had time to meet it..," but he did not meet them.

From July 2017 to November 2017, there were working sessions for migrating the applications from one server to another. (City Exhibit 1.9). Mr. Kartha was the only one who would have been able to migrate the app, but they were still not working.

Mr. Kartha's annual performance report for 2017 was rated improvement needed overall. (City Exhibit #1.10). "He wasn't able...quality, quantity and relationship with people were not satisfactory." This was all discussed with Mr. Kartha. The weekly meetings continued, and Mr. Kartha was relieved of the responsibilities for every app except for Class 400. According to Ms. S■■■■, of the specific tasks with specific target dates, Mr. Kartha only completed 8 of 25.

Because of the rating on his annual performance rating, Ms. S■■■■ also did a Special Performance Evaluation for Mr. Kartha. (City Exhibit #1.13). On this evaluation, Mr. Kartha was rated overall unsatisfactory. "His performance was still deteriorating...." Ms. S■■■■ said they continued the weekly meetings and providing guidance to Mr. Kartha, but "no improvement in quality and quantity...the amount of work is not enough for a programmer leader. He wasn't able to resolve the issues...I had to help the users." When asked if Mr. Kartha provided her with reasons for his performance issues, she said "not anything clear, just that he was still working on it...we are answerable to users...."

Although coaching continued into 2018, Ms. S■■■■ said there was no real improvement. She issued him a verbal warning. (City Exhibit #1.16). Ms. S■■■■ was asked about her knowledge of permitted disciplinary actions, and she contended that issuing Mr. Kartha a verbal warning was part of progressive discipline, in light of what had come before it. She also

explained that it was City policy to issue document the verbal warning in writing, although it remains a verbal warning.

Ms. S [REDACTED] was asked what more she could do to teach or assist Mr. Kartha. Ms. S [REDACTED] said she had tired “my best...we try to coach, tried to offer him weekly...tried my best...tried to convey we wanted him to be successful and meet user requirements and be a player on our team.” However, she maintained that there had been no real improvement from March 2017 to March 2018, when she wrote the verbal warning.

On cross examination, Ms. S [REDACTED] said that she was the supervisor, that the people who work with her and Mr. Kartha are all one team, but “each individual developer has responsibilities.” She contended that the tasks she assigned him were no more difficult than those she would assign any programmer. “We talked to him. He gave us the functionality of the apps, in general. We are not asking him to recreate, just migrate to a newer framework.” While Ms. S [REDACTED] said that migration of information might not always go as planned, she maintained that she had “extended the target dates...we only had him concentrated on one app, no other app...and he agreed to the target dates, too...no emails from him till the due date that he could not meet....”

Ms. S [REDACTED] acknowledged that Class 400 might be an “old app,” but said that “it is still used by the users. Not sure how we can say old...not decommissioned...as needs change, as servers change, it changes.

...other developers also migrated from that platform to a newer one.” Ms. S■■■■ also recalled that, in 2017, there was a “testing environment...we had a testing server and production server...as far as I know, we had it.” When asked about the coaching she allegedly provided, Ms. S■■■■ said that it was not simply status updates. “We had a projector...what he did, what was being done. We tried to make it as clear as possible. We can guide them towards a solution but each developer has the duty to write the code so if I write it for him, I will be writing it. ...Whenever we ask him to provide details, to answer his questions, we need clarification and details and he never provided it. He would say that he knows it so we would only offer a solution when he asked.”

Mr. J■■■■ G■■■■ is the Union Executive Board liaison for OIT and represented Mr. Kartha. He attended “probably 8” coaching sessions, during which “they would discuss what he was told to do and talked with and whether he met their expectations and what he was to do the following week.” Mr. G■■■■ contended that Mr. Kartha did believe that he had completed the tasks assigned, and recalled that “they would often divert away from the actual tasks and find different problems related to it, and say it wasn’t finished.”

Ms. S■■■■ was continuously asked if she had done all of this in an effort to target Mr. Kartha, whether she had anything against Mr. Kartha, whether she had a personal or professional problem with Mr. Kartha. She

said she did not, that she was trying to improve his work product. When specifically asked if she had anything personal against Mr. Kartha, Ms. S█ said "No, I don't know him."

Mr. Kartha testified on his own behalf. He said that his job responsibilities were to "create, maintain and do all user support activities." He explained that in 2017 he was responsible for three apps, Famis, Fixed Asset, and Class 400, and that all needed upgrades. In past years, in order to keep current on, among other things, computer languages, Mr. Kartha was sent to training. After 2016, although he asked to go to training, he was not sent.

Mr. Kartha went into detail, explaining the nature of and reason for the Class 400 app. He noted that "from 2003 to now I was supporting users...1 screens, 10 reports, 5 are used by all 2000 employees of the Department, 8 are used by custodians to track inventory, 7 are used by head custodians." Mr. Kartha said that he had designed it "from the beginning...before it was mainframe...when moved to the servers, we had a meeting with users for their requirements...planned and created the app and was appreciated by users from 2003 to 2015." Mr. Kartha also maintained that, prior to 2017, he had never had any issues with his work on the app.

As to Famis, Mr. Kartha "created it and was running...I used to maintain all the apps. Data comes from 480 mainframes and we load it

into servers and create reports...and other applications as well." With regard to Fixed Asset, "it is a classic centered app, for immovable objects, like a fire hydrant...we evaluate depreciation of, for example, a bridge constructed 4 years ago and what it is worth now." In 2017 there was an upgrade to a new version, for all the apps, requiring maintenance so the users can continue to use them. "Certain apps are easy to migrate. This is not. (One) was a control app...upgraded very quickly. (One) and Class 400 were not...conflicts with Microsoft and because of that it was an issue, took time for me to figure out why it was happening...from 2003 all upgrades moving smoothly...2015 upgrade, they changed STML5...I had to figure out how it works...taking time to learn it and do it.... All 3 are totally complete and tested. If not working, I should get complains from the users. I don't."

With regard to the deadlines set for him, Mr. Kartha said he did meet them. "When we started working, they said take this come back. I said no, weekly working, and they agreed to weekly meetings. They give certain tasks hard to meet, but I did. ...Demos in the Director's office...they sometimes as for cosmetic changes...tasks were extended...like moving an X box to a selection box or making a drop box...it can be done but it takes time." And, as for the coaching, Mr. Kartha said that each week he would send an email of what he had completed, "with a snapshot of work done and then demo in the

office...they suggest changes...I continue with them before next week...if a problem or something I cannot resolve, I ask for guidance and they say it's your program and you need to find a solution. Then they say it should look nice and beautiful...that's not helpful."

Mr. Kartha noted that his performance evaluations from 1995 to 2016 never contained any unsatisfactory evaluations. (Union Exhibit #1). Additionally, he had worked out of class from 2013 to 2015, without issue, including being commended by his supervisor. (Union Exhibit #s 2, 3). Mr. Kartha maintained that he had a good relationship with his supervisors until 2017. At that point, "I feel like they were kind of harassing me...I don't know the reason...maybe previous competition." Mr. Kartha had applied for the supervisor position, but did not get it; Ms. S■■■■ got it. Mr. Kartha had worked with Ms. R■■■■ G■■■■, the manager, while he was working out of class as a supervisor, and said "she is very competitive in nature...after 2016 onwards she was trying to harass me. Before that, we were working together on many projects. I don't know what happened."

As to the verbal warning, Mr. Kartha does not believe it is warranted and, in fact, believes it is "part of a planned write up program they decided...projects I was with for a long time, the complaints came, they were resolved.... Anything I completed and showed them, if errors, I fixed it until the next meeting...."

However, as to the harassment, Mr. Kartha gave a considered answer when asked about the purported harassment by his supervisor, Ms. S■■■■, and, by extension, Ms. S■■■■'s manager. Mr. Kartha said that “with all the prestige I had for all the years, I felt very harassed.” However, he also acknowledged that he had not filed any complaints about any alleged harassment with the Union, by lawsuit, with EEO or any other agency.

POSITIONS OF THE PARTIES

The City:

The City maintains that it had just cause to issue the verbal warning to Mr. Kartha. It reviewed the timeline attendant to the issuance. In March 2017, Mr. Kartha's supervisor received end user complaints about a certain application over which Mr. Kartha had sole responsibility. She investigated. Meetings were held with Mr. Kartha, his supervisor, the manager and the director. Additionally, the City worked with the Union in formulating a coaching plan for Mr. Kartha, to which he agreed. That plan lasted sixty (60) days and Mr. Kartha was fully aware of its expectations. However, there was no improvement shown.

“Despite the supervisor breaking the tasks down into such a granular level that he should have been able to complete the tasks...and thereafter holding weekly meetings, with all three levels of supervision...in which Mr. Kartha is explained the tasks and given achievable deadlines,

with the Union representative agreeing to the deadlines...Mr. Kartha was sent to do a job and he does not." In July 2017, Mr. Kartha had his yearly performance review, in which he was rated as Improvement Needed and/or Unsatisfactory in most categories. "Ninety (90) days pass and the civil service regulations allow a Special Performance Review...if the performance changed and it wasn't." As the City noted, Mr. Kartha continued to receive one on one coaching, to no avail.

In March 2018, Mr. Kartha was finally issued the verbal warning for unacceptable performance. "Each and every step taken to improve his performance issues was so that he could be a successful and productive member of the team...despite one year of one on one coaching, multiple conversations, two performance reviews...his performance did not improve. ...At one point he was responsible for three apps, then he was stripped of 2/3 of his responsibilities and told to focus on only one...he didn't do it...still, to this day...."

Turning to the verbal warning, the City remarked that it was memorialized in writing, as per past practice with the parties. The City argued that the Supervisor had done all that she could, as she contended in her testimony, and that she had nothing personally or professionally against Mr. Kartha. "She reduced his responsibilities from three applications to one application. Yet, the program still doesn't work. ...He has a performance review and what does he do to fix it...nothing. ...A

coaching plan...nothing. ...Annual performance reviews...nothing...a ninety day special performance review...nothing...all through there is weekly coaching...nothing...he complains about lack of training and yet he got weekly coaching.... There is a mountain of evidence showing he was assigned tasks that he failed to complete in over a year." Turning to Mr. Kartha's alleged defenses, the City is not persuaded. It has not seen anything from Mr. Kartha that would provide a rationale as to why Mr. Kartha is unwilling or unable to do the work assigned, especially after "the supervisor, manager and director were trying to have him perform at least with basic competency. ...Mr. Kartha thinks it is personal. It is not. It is business."

"The City absolutely had just cause to give him that warning. One year after customer complaints and he still didn't address the issues in a program he wrote." Therefore, the City asserts that the verbal warning is warranted, and the City demands that the grievance be denied.

The Union:

The Union avers that the burden of proof is on the City and that the City did not meet its burden to issue a verbal warning to Mr. Kartha. It avers that Mr. Kartha, who began working for the City in 1995, had always been an asset to his department and that his performance evaluations were always satisfactory, superior or outstanding, until 2017, when a new

manager came in and had issue with him. The Union contrasts that issue with the fact that Mr. Kartha successfully worked out of his class, in the same job as his supervisor, and was praised for that work.

The Union highlighted the fact that the issues Mr. Kartha was having with the app he designed had to do with software upgrades put into place by outside vendors, making the app incompatible and causing Mr. Kartha to have to work to make it compatible again. He was, indeed, told to fix the compatibility issues, in 2017, but found it virtually impossible to get the system to work. "His managers assigned him undoable tasks with the intent to push him down. The stack of exhibits is evidence of his being targeted. The Department wants the Arbitrator to believe that a top employee, a high functioning employee, became incompetent overnight. ...What the evidence shows is that once management was changed at the OIT...his performance went from excellent to totally incompetent. ...It just does not add up that Mr. Kartha, who has been superior, if not outstanding, would move to unacceptable.... Mr. Brock, the former Director, looked ta Mr. Kartha as someone who was moving up the ranks...that was his career trajectory. ...Yet, now management looks at him as a liability for unknown reasons."

Turning to the exhibits and evidence, the Union is insistent that "the extensive lists and emails of tasks constitute nitpicking...these errors are not so great as to constitute something to discipline for." More

importantly, Mr. Kartha is baffled and has no understanding as to why he is being singled out in this way. “He does not understand why management does not see the migration as a difficult undertaking...he is doing his best...he had to learn a lot of new computer language on his own since there has been no training..” despite Mr. Kartha having asked, repeatedly, to be sent for training, as he had in the past. While the Union and Mr. Kartha acknowledge some demonstrations having been given to him during the purported coaching sessions, it maintains that, “for the most part, the coaching sessions were simply status updates or nitpicking....”

The Union argues that the discipline imposed is not supported by just cause. The Union demands that the disciplinary action, the verbal warning, be rescinded.

OPINION

After a complete review of all the evidence and testimony, I find that the City did have just cause to issue a verbal warning to Mr. Kartha. My reasoning follows.

After listening to the testimony of both Ms. S■■■■ and Mr. Kartha, the issue between the two can best be described as a clash of expectations. I do not find that Ms. S■■■■ or Ms. K■■■■ were harassing Mr. Kartha. Even Mr. Kartha acknowledged that he was not suffering harassment in the legal

and conventional sense of the word. To him, the fact of what he believed was a harsher tone of voice than he might have appreciated was unwelcome. To him, the fact that most of the weekly “coaching” sessions seemed to be less coaching and more nitpicking was unwelcome. These are his perceptions. To Ms. S■■■■, the fact of Mr. Kartha seeming to be unwilling or unable to do what she is demanding of him, especially in light of the end-user/customer complaints is extremely problematic. None of this mean that Ms. S■■■■ is not doing her job of supervising Mr. Kartha correctly. And, while Mr. Kartha has lengthy seniority and years of experience working with the one app with which he is still charged to work, that does not mean that Mr. Kartha is providing the end-users what they need so they can do what they need to do. It is incumbent upon Mr. Kartha to either do the work charged him or to explain, in detail, why it is impossible, why the entire app might ultimately need to be rewritten. He has not done that. And, as is seen from the documentary evidence, he has not done what has been demanded of him; and, what has been demanded of him, with deadlines and expectations spelled out, does not have the appearance of being unreasonable. The City has followed the appropriate method towards issuing disciplinary action. There was just cause for the verbal warning to have been given to Mr. Kartha.

In view of the foregoing, I issue the following

AWARD

The grievance grieving the verbal warning, Grievance 2187-19-04, is denied.



Randi E. Lowitt
Arbitrator

Dated: February 23, 2020

State of New Jersey)
) ss.:
County of Morris)

I, Randi E. Lowitt, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.



Randi E. Lowitt
Arbitrator

Dated: February 23, 2020